

TSBPME Case No. 02-051

IN THE MATTER OF  
FLOYD ATKINS, D.P.M.

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BEFORE THE TEXAS STATE  
BOARD OF PODIATRIC  
MEDICAL EXAMINERS

SITTING IN AUSTIN,

LICENSE No. 1163

TRAVIS COUNTY, TEXAS

AGREED ORDER

BE IT REMEMBERED that on the date approved and entered below came to be considered the allegations against Floyd Atkins, DPM.. By letter dated May 9, 2002 the staff of the Texas State Board of Podiatric Medical Examiners (the "Board") gave preliminary notice to Dr. Atkins of its intent to investigate complaints, concerns or reports filed against him. Dr. Atkins was duly notified of the allegations against him and was given the opportunity to present information in rebuttal and to show compliance with the law. Dr. Atkins has cooperated with the staff of the Board.

By his signature on this Order, and upon acceptance and entry of this Order by the Board, Dr. Atkins does hereby waive his right to an administrative hearing before the State Office of Administrative Hearings, and judicial review of this Order. Dr. Atkins understands that he has the option, before signing this Agreed Order, to participate in a contested case hearing under the *Administrative Procedure Act*.

The Board and Dr. Atkins, in order to avoid the expense, delay and uncertainty of a hearing, have agreed to the entry of an order dispensing with the need for further action in this matter. Dr. Atkins agrees to this Order for the purpose of resolving this proceeding only and without admitting or denying the Findings of Fact and Conclusions of Law set out in this Order. The Board makes the following Findings of Fact and Conclusions of Law and enters this order:

FINDINGS OF FACT

1. Dr. Atkins is licensed as a podiatric physician in the State of Texas (License Number 1163) to practice podiatric medicine and is therefore subject to the jurisdiction of the Board, the Podiatric Medical Practice Act of Texas and the rules of the Board.
2. Complaints were filed against Dr. Atkins, and he was provided with notice of the complaints and with an opportunity to respond to the complaints, to present information due by July 19, 2002, and to show compliance with the law.
3. Dr. Atkins, as a podiatrist licensed in the State of Texas, must comply with the provisions of the Podiatric Medical Practice Act of Texas, the Board rules and Board orders.
4. Beginning no earlier than September 1, 2001, the Board conducted random

Continuing Medical Education (CME) audits for the September 1, 1999 - August 31, 2001 period.

5. Dr. Atkins was randomly selected for a CME audit.
6. Dr. Atkins signed the "Required CME Affirmation" on the annual license renewal form (dated October 29, 2001) indicating that he had "obtained the required 30 hours of approved CME's that are required by Board Rule to renew his license to practice podiatric medicine in Texas."
7. Dr. Atkins failed to obtain the requisite 30 CME hours for the September 1, 1999 - August 31, 2001 audit period.
8. After review of all CME certificates, Dr. Atkins was deemed to be deficient 5.25 hours.
9. Pursuant to 22 Tex. Admin. Code §378.2, Dr. Atkins was provided with the opportunity to seek an exception or hardship to the CME requirements, and was able to justify some hardship.

### CONCLUSIONS OF LAW

1. Dr. Atkins is required to follow the provisions of the podiatric medical practice act, Texas Occup. Code, §202.001, et. seq., and the associated rules of the Board, 22 Tex. Admin. Code § 371.1, et. seq..
2. Tex. Occup. Code §202.501(a) provides that, "the Board shall revoke or suspend a license; place on probation a person whose license has been suspended, or reprimand a license holder for violating the law regulating the practice of podiatry or a rule adopted by the board."
3. Tex. Occup. Code §202.551 provides that, "the Board may impose an administrative penalty against a person licensed or regulated under this chapter who violates this chapter or a rule or order adopted under this chapter."
4. 22 Tex. Admin. Code §376.1(a)(1) provides that, "any podiatric physician who violates any provision of these rules, or any provision of the Act shall be at the discretion of the Board subject to the following penalties: cancellation, suspension, revocation, or probated cancellation, revocation, or suspension of the license to practice podiatric medicine."
5. The Findings Of Fact numbers 1 through 9 establish that Dr. Atkins violated:  
*(a) 22 Tex. Admin. Code §378.1(a) which provides in part:* Each person licensed to practice podiatric medicine in the State of Texas is required to have 30 hours of continuing education every two years for the renewal of the license to practice podiatric medicine. Two hours of the required 30 hours of annual continuing education (CME) may be a course, class, seminar, or workshop in Ethics. It shall be the responsibility of the podiatric physician to ensure that all CME hours being claimed to satisfy the 30 hour bi-annual requirement meet the standards for CME as set by the Board.  
*(b) 22 Tex. Admin. Code §378.1(g) which provides:* These hours of continuing education must be obtained in the 24-month period immediately preceding the year for which the license was issued. The two-year period will begin on September 1 and end on August 31 two years later. The year in which the 30-hour credit requirement must be completed after the original license is issued is every odd-numbered year if the original license was issued in an odd-numbered year

and is every even-numbered year if the original license was issued in an even-numbered year. A licensee who completes more than the required 30 hours during the preceding CME period may carry forward a maximum of 10 hours for the next CME period.

**(c) 22 Tex. Admin. Code §378.1(j) provides:** If the licensee does not comply with the request for CME documentation within 30 days of receipt of the letter, or if the licensee is unable to provide proof of the hours claimed on the annual renewal form, the licensee will be investigated by the Board. If the investigation reveals that the requirement was not met, the licensee may be disciplined. The penalty for non-compliance with the bi-annual CME requirement shall be a letter of reprimand and a minimum \$2500 administrative penalty per violation up to the maximum allowed by law.

### **ORDER**

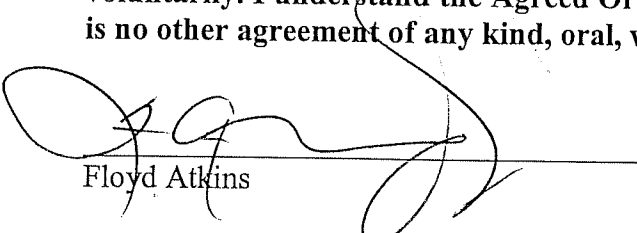
1. The Board issues a letter of reprimand, subject to the following conditions.
2. The fine of \$2,500.00 (Two Thousand Five Hundred Dollars and no/100) is conditionally waived. Failure to rectify the CME delinquency within 6 (six) months of the effective date of this Order will result in the automatic assessment of the fine, which shall be immediately fully due and payable. In addition, Dr. Atkins license to practice shall be automatically suspended, without further action or notice required by the Board. Suspension shall be in effect until such date as the fine is paid.
3. In addition to the requisite 30 hours of CME for the September 1, 2001 - August 31, 2003 audit period, Dr. Atkins is required to obtain an additional 5.25 hours to compensate for the deficiency during the September 1, 1999 - August 31, 2001 CME period. The 5.25 hours shall be directly related to podiatry and must be approved courses by the American Podiatric Medical Association and the Council on Podiatric Medical Education or under Section 378.1(b) of the Board Rules, 22 Texas Administrative Code. The 5.25 hours shall be completed within 6 (six) months of the effective date of this Order. Any hours completed prior to the effective date of this Order shall not be applied to the 5.25 hour requirement.
4. The terms of this **Agreed Order**, if accepted by the Board, become effective upon approval of the Board.
5. If Dr. Atkins fully complies with the terms of the **Agreed Order**, the Board agrees not to bring any further disciplinary action regarding the facts that are the subject of this Order.

### **GENERAL PROVISIONS**

1. Effective Date. This **Agreed Order** shall take effect and become binding upon the approval by the Board.

2. No Waiver. No waiver of any of the terms of this **Agreed Order** shall be valid unless mutually agreed to in writing. No waiver of default of any terms of the **Agreed Order** shall be deemed a waiver of any subsequent breach or default of the same or similar nature.
3. Governing Law. This Agreed Order is entered into pursuant to and shall be construed in accordance with the laws of the State of Texas including *Tex. Occup. Code Ann., §202.001 et. seq., the Podiatric Medical Practice Act.,* and the *Tex. Gov't Code Ann., §2001.001 et seq., the Administrative Procedure Act.*
4. Acknowledgment of Entire Agreement. Dr. Atkins acknowledges that he has carefully read this instrument, including all documents or exhibits, if any, that are referred to; that this instrument expresses the entire agreement between the parties concerning the subjects it purports to cover; and Dr. Atkins has executed this instrument freely and of his own accord.
5. Notice. Any notice to be given under the terms of this **Agreed Order** by either party to this order shall be in writing and shall be delivered by personal delivery or certified mail, return receipt requested, to the following addresses:  
  
Floyd Atkins, DPM  
15719 Spring Forest Drive  
Houston, TX 77059-3806  
  
Texas State Board of Podiatric Medical Examiners  
P.O. Box 12216  
Austin, TX 78711-2216
6. Upon approval of this Agreed Order by the Board, the Presiding Officer and the Executive Director are authorized to sign the Order on the Board's behalf.

I, Floyd Atkins, DPM, have read and understand the foregoing Order. I understand that by signing, I waive the right to a hearing before the State Office of Administrative Hearings and to judicial review of the Agreed Order. I sign it voluntarily. I understand the Agreed Order contains the entire agreement and there is no other agreement of any kind, oral, written or otherwise.

  
Floyd Atkins

12/13/2002  
Date

IN THE STATE OF TEXAS

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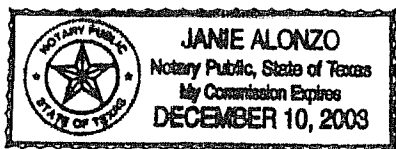
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COUNTY OF Travis

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BEFORE ME, on this day personally appeared Floyd Atkins known to me, who first, being duly sworn, signed the foregoing **Agreed Order** in my presence.

SIGNED on this the 13<sup>th</sup> day of December 2002.



Janie Alonzo  
(Printed Name of Notary Public)

Janie Alonzo  
Notary Public, in and for the State of Texas

APPROVED AND ENTERED by the Texas State Board of Podiatric Medical Examiners on this the 12<sup>th</sup> day of February, 2003, after a Board vote.

[Signature]

Donald W. Falknor, D.P.M.  
Board President

[Signature]  
Allen M. Hymans  
Executive Director